1027.

SUPREME COURT OF THE UNITED STATES.

No. 89.

BURRINGTON ANTHONY, MARSHAL, U. S., PL'FF IN ER.

VERSUS

CYRUS BUTLER.

ERROR TO THE CIRCUIT COURT, U. S. FOR R. ISLAND.

INDEX.

	Original.	*Print.*
Writ	1	3
Deputation	3	4
Oath on same	–	4
Replevin Bond	4	5
Officer's Return	6	6
Cyrus Butler's Receipt	–	6
Plea	–	7
Agreement	7	7
Plea	8	8
Replication	–	8
Rejoinder	–	8
Verdict and Judgment	9	9
Bill of Exceptions	10	9
Mortgage Deed—D. Greene, ag't to C. Butler	18	12
Copy Votes U. Steam Mill Co.	21	15
Act of Incorporation U. S. Mill Co.	24	17
Amended to said act	28	20
" " Act and amendment	—	20
Records Union Steam Mill Co.	30	21
Copy Deed—Wm. P. Salisbury to D. Greene	38	27
" Notice to Burrington Anthony	39	28
" Demand	40	29
Petition for Writ of Error	41	30
Bond	42	31
Writ of Error	43	31
Citation	45	31
Clerk's Certificate	47	31

Langtree & O'Sullivan, Print.

In the Case of Replevin.

CYRUS BUTLER
vs.
BURRINGTON ANTHONY.

Writ.

RHODE ISLAND DISTRICT, *sct.*

The President of the United States of America to Jabez
[SEAL.] J. Potter, of said District, an indifferent person, greeting:

We command you that you replevy the goods and chattels following, viz: Six sorting tables, one scouring box, two wash boxes, two fancy dye tubs, three blue dye tubs, a lot of sticks for dyeing wool on, four wool hand-barrows, one wool picker, nine breaker carding machines, with breast cylinders, seven finishing carding machines, one breaker, and one finisher carding machine, two warp mules of two hundred and eighty spindles each, two woof mules, of three hundred and twenty spindles each, one warp-jack, of two hundred spindles, one woof-jack, of two hundred and forty spindles, thirty-four broad looms, with shuttles, harnesses, and bobbins, one harness frame, one vice and bench, with lot of tools, one warping and sizing machine, three spooling machines, with spools and creels, ten sets of fulling mills, two washers, five gigs, with iron frames, two rolling gigs, lot of teazle flats, one pump, two sig cisterns, one dry beater, one brusher, four shearing machines, two vibrating and two rovolving, three Parson's shearing machines, one press, with two screws, press papers, bars, and press tables, one waste-cutter, four strings of tenter bars, and platform for drying wool, eight extra loom-beams, with iron heads, thirty large baskets, two scale-beams, three clocks, about thirty thousand bobbins, twelve fulling or bobbin boxes, about eight hundred feet of steam-pipe, a lot of copper pipe, with cocks and extra copper pipe, and parts of washing machines, second hand, one new work-bench in card room, with a lot of tools, two parts of pickers, with lot picker saw-plates, some second hand, some new, lot of spools for mules and jacks, a lot of loom-bits, a lot of card bits, a lot of connecting-bits, wide and narrow, a steam-engine, with six boilers and all pipes, and other apparatus connected therewith, a lot of steam-rolls, two pair of shears, large and long size, a lot of wringing cloth and netting, for blue vats, a lot of leaders, new and old, for steaming cloth, belonging to Cyrus Butler, of Attleborough, in the Massachusetts District, a citizen of the State of Massachusetts, now attached, by Burrington Anthony, of Providence, in

the Rhode Island District, Esquire, Marshal of said Rhode Island District, a citizen of the State of Rhode Island and Providence Plantations, at East Greenwich, in the district aforesaid, and there deliver unto the said Cyrus Butler, provided the same are not taken and detained upon mesne process, warrant of distress, or upon execution, as the property of the said Butler; and summons the said Burrington Anthony, that he appear at the next circuit court, to be holden at Providence, within and for the Rhode Island District, on the fifteenth day of November next ensuing the date hereof, to answer unto the said Cyrus Butler in a plea of replevin, that the said Anthony, on the twenty-fifth day of June, A. D. 1838, at said East Greenwich, unlawfully, and without any justifiable cause, took the goods and chattels of the said Cyrus Butler as aforesaid, and them unlawfully detained to this day, to the damage of the said Cyrus Butler, as he says, twenty thousand dollars; provided he, the said Cyrus Butler, shall give bond to the said Burrington Anthony, with sufficient surety or sureties, in the sum of thirty thousand dollars, being twice the value of said goods and chattels, to prosecute the said writ of replevin to final judgment, and to pay such damages and costs as the said Burrington Anthony shall recover against him; and also to return and restore the same goods and chattels in like good order and condition, as when taken, in case such shall be the final judgment. And have you there this writ, with your doings thereon, together with the bond you shall take.

Witness the Hon. Roger B. Taney, our chief justice, at Providence aforesaid, this 28th day of June, Anno Domini 1838.

JOHN T. PITMAN, *Clerk.*

Deputation.

RHODE ISLAND DISTRICT, *sc.*

JUNE 28th, 1838.

To Jabez J. Potter, of Providence, in said Rhode Island District:

I hereby appoint and authorize you to execute and return the within precept.

JOHN PITMAN,
District Judge of the U. States
For the Rhode Island District.

Oath.

I, Jabez J. Potter, do solemnly swear, that I will faithfully execute the within precept, and true return thereof make, and take only my lawful fees, so help me God.

JABEZ J. POTTER.

Sworn to this 28 June, 1838, before me.

JOHN PITMAN,
Dist. Judge U. S. for R. I. Dist.

RICHARD W. GREENE,
SAMUEL AMES, and
CHARLES F. TILLINGHAST,
Plffs. Attornies.

Bond.

Know all men by these presents, that we, Cyrus Butler, of Attleboorough, in the State of Massachusetts, as principal, and William Butler, of Providence, in the State of Rhode Island, as surety, are held and firmly bound unto Burrington Anthony, of said Providence, marshal of the Rhode Island District, in the full and just sum of thirty thousand dollars, to be paid to him, the said Burrington Anthony, his executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our several and respective heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated at East Greenwich, in said State of Rhode Island, this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and thirty-eight.

The condition of this obligation is such, that whereas the said Cyrus Butler has commenced an action of replevin against the said Burrington Anthony, for six sorting tables, one scouring box, two wash boxes, two fancy dye tubs, three blue dye tubs, lot of sticks for dyeing wool on, four wool hand-barrows, one wool-picker, nine breaker carding machines, with breast cylinders, seven finishing carding machines, one breaker, and one finisher carding machine, two warp-mules, of two hundred and eighty spindles each, two woof mules, of three hundred and twenty spindles each, one warp-jack, of two hundred spindles, one woof-jack, of two hundred and forty spindles, thirty-four broad looms, with shuttles, harnesses, and bobbins, one harness-frame, one vice and bench, with lot of tools, one warping and sizing machine, three spooling machines, with spools and creels, ten sets of fulling mills, two washers, five gigs, with iron frames, two rolling gigs, lot of teazle flats, one pump, two sig cisterns, one dry beater, one brusher, four shearing machines, two vibrating and two revolving, three Parson's shearing machines, one press, with two screws, press papers, bars, and press, tables, one waste cutter, four strings of tenter-bars, and platform for drying wool, eight extra loom-beams, with iron heads, thirty large baskets, two scale-beams, three clocks, about thirty thousand bobbins, twelve fulling or bobbin boxes, about eight hundred feet of steam-pipe, a lot of copper-pipe, with locks and extra copper-pipe, parts of washing machines, second hand, one new work-bench in card-room, with a lot of tools, two parts of pickers, with lot picker saw plates, some second hand, some

new, lot of spools for mules and jacks, a lot of loom-bits, a lot of card-bits, a lot of connecting-bits, wide and narrow, a steam-engine, with six boilers, and all pipes, and other apparatus connected therewith, a lot of steam-rolls, two pair of shears, large and long size, a lot of wringing cloth and netting for blue vats, a lot of leaders, new and old, for steaming cloth; before the circuit court of the United States for the Rhode Island District, at their next term, to be holden at Providence, within and for said Rhode Island District, on the fifteenth day of November next ensuing the date hereof.

Now, therefore, if the said Cyrus Butler shall prosecute said writ to final judgment, and pay such damages and costs as said Burrington Anthony shall recover against him, and shall also return and restore the afore-enumerated articles of machinery and other property, in like good order and condition as when taken, in case such shall be the final judgment, then this obligation be void; otherwise, to be and remain in full force, virtue, and effect.

CYRUS BUTLER, [L. S.]
WM. BUTLER. [L. S.]

Signed, sealed, and delivered in presence of
SAML. A. METCALF,
CHARLES F. TILLINGHAST.

Officers Return.

RHODE ISLAND DISTRICT, *sc.*

EAST GREENWICH, *June 29th*, 1838.

I have this day replevied all the within described property, and the same have delivered to Cyrus Butler, and have, at the same time, summoned the within named Burrington Anthony, as commanded.

JABEZ J. POTTER.

Fees.

2 services - - - - -	$3 00
Copy of writ - - - - -	2 00
2 copy of paid - - - -	2 00
Delivery of and taking acc. of property replevied	5 00
15 miles travel - - - - -	1 50
	$13 50

Cyrus Butler's Receipt.

I hereby acknowledge that I have received of Jabez J. Potter all the articles mentioned in the within writ of replevin.

CYRUS BUTLER.

June 29, 1838.

The foregoing is a true copy of the writ of replevin and bond, which were filed in the clerk's office of said circuit court on the 2d day of November, 1838, and on the 9th of said month the following plea was filed:

Plea.

And the said Burrington Anthony comes and defends the force and injury when, &c., and well avows the taking of the goods and chattels in the declaration aforesaid mentioned, in the said place in which, &c., and the detention thereof, &c., and justly, &c., because he says that on the said day of , A. D. 1838, he was marshal of the District of Rhode Island, duly appointed and qualified to serve process therein; that on said last mentioned day an execution issued out of the office of the clerk of the United States circuit court for the said District of Rhode Island, wherein was plaintiff, and Daniel Green, William P. Salisbury, and Rufus W. Dickinson, were defendants, which said execution was delivered to him, the said marshal, for levy and service thereof; and that thereupon he levied the said execution on the goods and chattels in the plaintiff's declaration mentioned, as the goods and chattels of the said Greene, Salisbury, and Dickinson, for the purpose of satisfying and paying the debt and costs on said execution; and this he is ready to verify. Wherefore he prays judgment, and a return of the goods and chattels aforesaid, together with his damages, costs, and charges, to be adjudged to him, &c.

By PEARCE & TURNER, *his Attos.*

And afterwards, the following agreement was filed in open court, at the November term, 1838, of said court.

Agreement.

It is agreed that the plea of the deft. may be withdrawn, and a new plea be filed; and that such articles of property which are included in the writ of replevin, and are not included in the mortgage, shall be returned to the marshal without any liability on the part of the plaintiff in replevin, to pay damages upon the replevin bond, on account of said articles being included in said action.

SAMUEL AMES,
For Plff.
PEARCE & TURNER,
For Defts.

We hereby agree to give up to the marshal the following articles, and to accept the same in satisfaction of above agreement:

4 wool hand-barrows
1 harness frame, and harnesses for twenty-four looms
1 warping sizing machine, with copper cylinder

Lot of copper-pipe, with cocks and extra pipe
1 new vice-bench in card-room, with tools
500 spools.

SAMUEL AMES,
For Plff.
S. Y. ATWELL,
For Deft.

And also in pursuance of said agreement, the following plea was put in:

Plea.

And the said Burrington Anthony comes and defends, &c., when, &c., and says that the said plaintiff his action aforesaid thereof against him, ought not to have or maintain, but from having or maintaining the same, ought to be forever precluded and barred, because he says that, at the time when the taking of said goods and chattels in the plaintiffs declaration, is supposed to be the property of the same, was in Daniel Greene, William P. Salisbury, and Rufus W. Dickinson, copartners in trade, doing business under the firm of the Union Steam Mill Company, to wit, at East Greenwich, in the county of Kent, and State of Rhode Island, on the 16th day of June, 1838, at 4 minutes before twelve o'clock, P. M. Without that, that the property of the same goods and chattels was in the plaintiff, as he by the writ and declaration above supposes, and this he is ready to verify. Wherefore he prays judgment, and a return of the same goods and chattels to be adjudged to him, and for his costs.

By PEARCE & TURNER,
His Attornies.

Replication.

And the plff. replies to the defts. plea in bar, and says, that for any thing therein contained he ought not to be precluded from having his said action, because he says that, at the time of the taking of said goods in the plff's writ mentioned, the property of the same was in the plff., and not in the said Daniel Greene, Wm. P. Salisbury, and Rufus W. Dickinson, as in said plea is averred; and this he prays may be enquired of by the country.

By his attornies:

C. F. TILLINGHAST,
R. W. GREENE, and
S. AMES.

Rejoinder.

And deft. likewise.

By PEARCE & TURNER,
His Attos.

Verdict and Judgment.

RHODE ISLAND DISTRICT, *sc.*

CIRCUIT COURT, *November Term*, 1838.

The preceding case being now called for trial, is committed to the following jury, viz :

RUSSEL SMITH, Foreman,
ASA NEWELL, 2d,
JAMES M. WHIPPLE,
REUBEN WHIPPLE;
WILLIAM SMITH,
GEORGE MATHEWSON,
JAMES M. COOK,
SHELDON LUTHER,
RANDALL LEWIS,
PETER TAYLOR,
GEORGE W. POTTER,
STEPHEN JOHNSON, Jr.,

Who return the following verdict: "The jury find that the property in the goods and chattels in the plaintiff's writ named, was, at the time of the taking thereof by the defendants, in the plaintiff.

RUSSEL SMITH, *Foreman.*

Which verdict being affirmed by the jury, is accepted by the court. Whereupon it is considered by the court here, that the plaintiff have and recover his damages, amounting to one cent and costs of suit, taxed at dollars cents, amounting, in all, to the sum of dollars cents.

Attest: JOHN T. PITMAN, *Clerk.*

UNITED STATES CIRCUIT COURT, *November Term*, *A. D.* 1838.

In the case

CYRUS BUTLER, Plaintiff in Replevin,

vs.

BUNINGTON ANTHONY, (Marshal,) Deft.

Bill of exceptions filed by defendant.

Be it remembered, that at the November term of the circuit court of the United States, holden at Providence, within and for the district of Rhode Island, the said Cyrus Butler, by his attornies, came into said court and impleaded the said Bunington Anthony, in a plea

of replevin, in manner as is set forth in the annexed record, and after issue joined in said case as aforesaid, and a jury empannelled thereon, at the trial thereof, the plaintiff produced in support of his title, to the several articles named in his said writ of replevin, a certain deed bearing date the 20th day of November, A. D. 1837, executed by one Daniel Greene, as the agent of the Union Steam Mill Company, said company being a manufacturing corporation, conveying to the plaintiff in mortgage, certain lands with a woolen mill and other buildings thereon being, together with the machinery in said mill, said machinery being the several articles named in the plaintiff's said writ of replevin, and thereupon proved the execution of said deed by Charles F. Tillinghast and Nathan Whiting, the subscribing witnesses thereto, and produced and read the act of the General Assembly of the State of Rhode Island, incorporating said Union Steam Mill Company, and the several acts in amendment thereof, and produced the record of the corporate proceedings of said Union Steam Mill Company, and proved the same by the Secretary thereof, and read said record of the corporate proceedings; which said deed and copies of said act of the General Assembly of Rhode Island, incorporating said Union Steam Mill Company, and the several acts in amendment thereof, and of the records of said corporate proceedings, are hereunto annexed.

And the counsel of the plaintiff, also read a duly certified copy of the deed from William P. Salisbury, to the said Daniel Greene, dated the eighteenth day of May, A. D. 1837, conveying to the said Daniel Greene all his interest in the property, real and personal of the said Union Steam Mill Company, a copy of which said deed is hereunto annexed.

And the plaintiff further proved that the said Daniel Greene, who executed the deed first aforesaid, was and had been from the time of the formation of said company, the general agent thereof, and as such had made all the purchases for said company, and made all the sales, and transacted all the business of said company, and that the said deed was made and executed by the said Daniel Greene, by and with the consent and authority of the said company, so far as it had a corporate capacity, existence, and organization to consent to, and authorize such an act; and also, by and with the consent and authority of the several persons, who at the time of the execution thereof, were members of said Union Steam Mill Company, a manufacturing company, doing business under that name.

And thereupon the plaintiff's counsel insisted that the said deed of the Union Steam Mill Company, conveyed to the plaintiff the several articles named in his said writ of replevin, as the corporate deed of said company, and further insisted that if said deed did not operate as the corporate deed of said Union Steam Mill Company, it nevertheless was competent to convey to the plaintiff a valid title to the several articles named in his said writ of replevin, inasmuch as the said deed was made and executed by and with the consent of the several persons, who at time of the execution thereof, were members of said Union Steam Mill Company, a manufacturing company, doing busi-

ness under that name; and further, that the said Daniel Greene, as the general agent of said company, was duly authorized to convey the several articles named in the plaintiff's writ, in manner aforesaid.

Whereupon the counsel for the defendant objected, that said deed to the plaintiff was wholly inoperative, because at the time of the execution thereof, said Union Steam Mill Company had no corporate existence; and thereupon the court decided, that the corporate existence of the said corporation was not so proved by the evidence adduced as to entitle the said deed to be read to the jury as the corporate deed of the said corporation; but, that if said deed was inoperative as the corporate deed of the said Union Steam Mill Company, it nevertheless was competent to convey to the plaintiff a valid title to the several articles named in his said writ of replevin, as the act of the members of said manufacturing company, in copartnership under the name and style aforesaid.

Whereupon the said counsel for the said defendant did then and there except to the said opinion of said court, and did insist that the said several matters, and proofs were not sufficient to support the plaintiff's title to the several articles named in his said writ of replevin.

And furthermore, the counsel for the defendant objected to said deed, that it did not appear that the same had been recorded prior to the defendant's levy on the articles named in the plaintiff's said writ of replevin, in conformity with the act of the General Assembly of the State of Rhode Island, regulating the record of mortgages of personal property, entitled, "an act to prevent fraud in the transfer of personal property," passed February 1st, A. D. 1834.

Whereupon the counsel for the plaintiff, produced and read to the court, an endorsement on the back of said deed, signed by the clerk of the said town of East Greenwich, in the words and figures following, to wit: "Lodged in the town clerk's office to record Nov. 20th, 1837, at 5 o'clock, P. M., and recorded same day in the records of mortgages in East Greenwich, Book No. 4, page 49, 50, 51.

Witness,

N. WHITNEY, *T. Clerk*."

And insisted that said certificate endorsed as aforesaid, was sufficient evidence that the said deed was duly recorded according to the provisions of said statute.

Whereupon the defendants counsel objected to the sufficiency of the certificate aforesaid as evidence that said deed was duly recorded, and produced evidence to said court, that in the town clerk's office of said East Greenwich, there was a book kept by said town clerk, in which all mortgages of personal property only were recorded, and all other mortgages which included real estate, were recorded in other books kept in said office, and that after the recording of the said deed in the book of mortgages of real estate on the 20th of November, A. D. 1837, as aforesaid, the said deed of the plaintiff was by him taken from the office of the said town clerk, and afterwards on the 14th of November, 1838, was returned by the said plaintiff, to said office and

then recorded in the book kept for mortgages of personal property, as aforesaid; and said court decided that said certificate was sufficient evidence that said deed was duly recorded.

Whereupon the said counsel for the said defendant excepted to the said opinion of said court, and insisted that said certificate on the back of said deed, was not sufficient evidence that said deed of mortgage had been recorded according to the provisions of said statute, and that the same had not been so recorded.

And inasmuch as the said several matters of law, and the said several matters, so produced and given in evidence, on part of the said plaintiff, and thes aid defendant, and by their respective counsel insisted on and objected to in manner as aforesaid, do not appear by the record and verdict aforesaid, the said counsel for the said defendant, did then and there propose their aforesaid exceptions to the said opinions of the said court, and requested them to put the seal of said court to this bill of exceptions, containing the said several matters so produced and given in evidence for the party objecting as aforesaid.

And thereupon the judges of the aforesaid court, at the request of said counsel for the party objecting, did put their said seals to this bill of exceptions, the same being to be true, pursuant to law in such cases provided, at the term of said court, and the trial aforesaid.

JOSEPH STORY, [SEAL.]
One of the judges of the Sup. Cou. of the United States.
JOHN PITMAN, [SEAL.]
District judge U. States, for R. I. Dist.

Papers annexed to the Bill of Exceptions.

Mortgage Deed.

DANIEL GREENE, Agent, to CYRUS BUTLER.

To all people to whom these presents shall come: The Union Steam Mill Company, a corporation legally incorporated by the Legislature of the State of Rhode Island and Providence Plantations, and established and doing business in East Greenwich in said State, send greeting:

Know ye, that we, the said Union Steam Mill Company, for, and in consideration of the sum of sixteen thousand four hundred and fifty-nine dollars in hand, before the ensealing hereof, well and truly paid by Cyrus Butler, of Providence, in said State, the receipt whereof we do hereby acknowledge, and are therewith fully satisfied, contented and paid, and thereof and of every part and parcel thereof, do exonerate, acquit and discharge him, the said Cyrus Butler, his heirs, executors and administrators, forever by these presents: have given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed; and by these presents do freely, fully, and absolutely give, grant, bargain, sell, alien, enfeoff, convey and confirm unto

him, the said Cyrus Butler, his heirs, and assigns forever. A lot of land situate in said East Greenwich, with the steam factory thereon. Also one lot of land situate in said East Greenwich, with seven dwelling-houses thereon. Also one fountain for water, situate about six hundred feet westerly and northerly from said factory building, with the privilege forever of laying and keeping in repair water pipes from said fountain to said factory. Meaning herein to include all the real estate of the said corporation, being the same estates conveyed to said corporation by deed from Daniel Greene, bearing date the twenty-first day of October, in the year of our Lord, one thousand eight hundred and thirty-seven, and recorded in book number fourteen, and page one hundred and thirty-six of the record of deeds in said town of East Greenwich. Reference to said deed being had for a more particular description of said estates. And also the steam engine in said factory. And also all the machinery in said factory, consisting in part of one wool picker, ten single cards with breast cylinders; seven double cards with condencers; two warp mules with two hundred and eighty spindles each; two weft mules with three hundred and twenty spindles each; one warp jack, with two hundred spindles; one weft jack with two hundred and forty spindles; thirty-four looms; one warping machine; three spooling machines; ten fulling mills; two washing mills for cloth; five raising gigs, two morsing gigs; three broad Parson's shearing machines; two broad vibrating shearing machines; two broad revolving shearing machines; one brushing machine; one dry beater brushing machine; two first rate screw presses; one indigo grinder; one waist cutter; and one machine for grinding shears. To have and to hold the said granted and bargained premises, with all the appurtenances, privileges and commodities to the same belonging, or in any wise appertaining to him, the said Cyrus Butler, his heirs and assigns forever, to his and their only proper use, benefit and behoof forever. And we, the said the Union Steam Mill Company for ourselves and our successors, do covenant, promise and grant, to and with the said Cyrus Butler, his heirs and assigns, that at and before the ensealing hereof, we are the true, sole, and lawful owners of the above bargained premises, and are lawfully seized and possessed of the same in our own proper rights as a good, perfect, and absolute estate of inheritance in fee simple; and have in us good right, full power, and lawful authority to grant, bargain, sell, convey and confirm, the said bargained premises in manner as aforesaid. And that the said Cyrus Butler, his heirs and assigns, shall, and may from time to time, and at all times forever hereafter, by force and virtue of these presents, lawfully, peaceably and quietly have, hold, use, occupy, possess and enjoy, the said demised and bargained premises, with the appurtenances, free and clear, and freely and clearly acquitted, exhonerated and discharged of, and from all, and all manner of former or other gifts, grants, bargains, sales, leases, mortgages, wills, entails, jointure, dowries, judgments, executions and incumbrances of what name or nature soever, that might in any measure or degree obstruct or make void this present deed.

Furthermore, we, the said the Union Steam Mill Company, for ourselves and our successors, do covenant and engage the above demised premises to him, the said Cyrus Butler, his heirs and assigns, against the lawful claims or demands of any person or persons whatsoever, forever to warrant, secure and defend by these presents.

Provided nevertheless, and this deed is upon this express condition, that whereas the said the Union Steam Mill Company are now indebted to the said Cyrus Butler in the sum sixteen thousand four hundred and fifty-nine dollars, by promissory note of even date, herewith and payable in two years after date, with interest payable semi-annually. Now if the said the Union Steam Mill Company shall pay or cause the said sum of money in said note mentioned, with the interest thereof according to the tenor of said note, then this deed shall be void and of no effect, but otherwise shall be, and remain in full force and virtue.

In witness whereof, we, the said The Union Steam Mill Company, have caused the seal of said corporation to be hereto affixed on this twentieth day of November, in the year of our Lord one thousand eight hundred and thirty-seven, by Daniel Greene, their agent, for that purpose specially appointed.

UNION STEAM MILL CO.
DANIEL GREENE. [L. S.]

Signed, sealed and delivered in presence of
NATHAN WHITING,
CHARLES F. TILLINGHAST.

KENT, *sc:*

At East Greenwich, Nov. 20th, 1837, personally appeared Daniel Greene, subscriber to the foregoing instrument, and acknowledged the same to be his free act and deed, and the seal of said corporation by him thereto affixed.

Before me:

NATHAN WHITING,
Town Clerk.

Lodged in the town clerk's office to record, Nov. 20th, 1837, at 5 o'clock, P. M. and recorded same day in the records of mortgages in East Greenwich, book No. 4, pages 49, 50, and 51.

Witness:

N. WHITING,
T. Clerk.

Recorded in the records of mortgages of personal property in East Greenwich, November 14th, A. D. 1838, book No. 1, pages 80, 81, and 82.

Witness:

NATHAN WHITING,
Town Clerk.

COPY OF

Votes of the Union Steam Mill Corporation relating to the foregoing mortgage.

At a meeting of the Union Steam Mill Company holden on the 20th day of November, A. D. 1837.

Present:

DANIEL GREENE, and
RUFUS W. DICKINSON.

Voted, That a mortgage of all the lands, buildings, steam engine and machinery of this corporation, with all the privileges and appurtenances thereof, be made to Cyrus Butler, of Providence, with the usual covenants of seizin and warranty, to secure to him the payment of a note of this date for sixteen thousand four hundred and fifty-nine dollars, payable in two years from date with interest semi-annually, and that Daniel Greene be the agent of this corporation, to sign, seal, acknowledge, and deliver the said deed in behalf of this corporation.

Voted, That a mortgage of all the lands, buildings, steam engine and machinery of this corporation, with all the privileges and appurtenances thereof be made (subject to the before mentioned mortgage to Cyrus Butler) to Isaac Brown, Welcome A. Greene, and Benjamin C. Harris, as joint tenants in fee simple, and in trust for the use and benefit of the persons and corporations hereafter named, and their assigns, holders of the notes hereafter mentioned, and with the usual covenants of seizin and warranty to secure the payment of the following notes of this date, payable in two years from date with interest semi-annually, to wit: One to Cooke & Brown, for three thousand and ninety-two dollars and forty-six cents. One to Welcome A. Greene, for three thousand dollars. One to Welcome A. Greene, for twenty-eight hundred and three dollars and sixty-four cents. One to Abigail Greene, for two thousand dollars. One to the Mechanics Bank, for two thousand and fifty-six dollars and six cents. One to Mechanics Bank, for three thousand six hundred and seven dollars and seventy-eight cents. One to the Phenix Iron Foundry, for fifteen hundred and twenty-nine dollars and fifty cents. One to Edward Padelford, for two thousand five hundred and seventy-nine dollars and forty-seven cents. One to the Newport Exchange Bank, for four thousand one hundred and twenty-eight dollars and seventy cents. One to the Weybossel Bank, for two thousand and sixty-three dollars and ninety-one cents. And one to James Eames, for nine hundred and eighty-two dollars and twenty-four cents.

And also to secure the fulfillment of a covenant on the part of this corporation, to be inserted in said deed, that this corporation will at all times, until the payment of said notes, keep their said machinery in repair, and their said factory, and dwelling-houses, and machine-

ry, insured against loss or damage by fire to an amount equal to the sums due on said note to Cyrus Butler, and on the notes hereinbefore mentioned, and that this corporation will assign the policy and policies of insurance to the said Cyrus Butler in trust, to apply any money he may receive thereon, first to the payment of any sum due him upon the note secured in the mortgage deed to him, and secondly, to the proportional payment of the notes before mentioned.

And also to authorize the said Isaac Brown, Welcome A. Greene and Benjamin C. Harris, in case this corporation do not insure as aforesaid to procure insurance on said factory, and dwellings, and machinery, to the amount above mentioned, and to apply any monies received by them thereon. First, to pay all expenses of insurance. Secondly, to the payment of any sums of money due to said Cyrus Butler, and secured in his said mortgage, and then to the proportional payment of the notes above mentioned, and to secure the payment of all expenses of insurance obtained by them. And that Daniel Greene be the agent of this corporation to sign, seal, acknowledge and deliver the said mortgage deed in behalf of this corporation.

Voted, That a mortgage deed of all the lands, buildings, steam engine and machinery of this corporation, with all the privileges and appurtenances thereof, be made to the Rhode Island Central Bank to secure the payment of the sum of ten thousand dollars in part payment of a note of twenty thousand dollars, given by said Union Steam Mill Company, payable in twelve months from the date thereof, to said bank, subject to the mortgage to Cyrus Butler, and the mortgage to Isaac Brown, Welcome A. Greene, and Benjamin C. Harris as trustees, given them this day, and that Daniel Greene be the agent of this corporation to sign, seal, acknowledge and deliver the said mortgage deed in behalf of this corporation.

DANIEL GREENE, *Chairman.*
R. W. DICKINSON, *Clerk.*

EAST GREENWICH, Nov. 20, 1837.

I certify that the preceding is a true copy from the records of the Union Steam Mill Company.

R. W. DICKINSON,
Clerk of U. S. Mill Co.

Recorded in the records of mortgages in East Greenwich, book No. 4, pages 48 and 49. Nov. 20th, A. D. 1837.
Witness:

N. WHITING,
T. Clerk

Recorded in the records of mortgages of personal property in East Greenwich, book No. 1, pages 78, 79, and 80. Nov. 14th, A. D. 1838.
Witness:

N. WHITING,
Town Clerk.

Union Steam Mill Company's Acts of Incorporation.

State of Rhode Island and Providence Plantations. In General Assembly, October Session, A. D. 1835.

An act to incorporate the Union Steam Mill Co.

Whereas, Daniel Greene, William P. Salisbury, and Rufus W. Dickinson, for themselves and their associates, have petitioned this General Assembly for an act of incorporation, for the purpose of manufacturing by steam power. Be it therefore enacted by the General Assembly, and by the authority thereof it is enacted, that they, the said Daniel Greene, William P. Salisbury, and Rufus W. Dickinson, with their associates, successors and assigns shall be, and they are hereby made a body politic, and corporate able, and capable in law to have, possess, purchase, hold and enjoy to them, their successors and assigns, lands, tenements, and hereditaments, goods, chattles, and effects of every kind and nature whatsoever, and the same to grant, bargain and sell, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended against, in all courts of records, or in any other place or places, to make, have and use a common seal, and the same to alter at pleasure; also to ordain, establish, and put in execution such bye-laws and regulations as to them shall seem necessary and convenient for the government, regulation and management of the said corporation, and the funds, business and property thereof not repugnant to the laws of this State, nor of the United States, and generally to do and execute all and singular act or acts, matters and things which shall, or may to them appertain, to carry into effect the powers and privileges herein and hereby granted.

Section second. And be it further enacted, That the capital stock of said corporation shall not exceed one hundred and twenty-five thousand dollars, and the same shall at all times consist of the property, real and personal, of every description belonging to said corporation, and be divided into as many shares as the said corporation may deem expedient, which shares shall be deemed and taken as personal estate of the stockholders respectively, and of which shares the owners shall have certificates, under the seal of the corporation and the signature of the clerk.

Section third. And be it further enacted, That the shares in said capital stock shall not be liable to assessment, but said capital may from time to time, be increased by said corporation to an amount not exceeding two hundred thousand dollars, by creating new stock; provided, however, that no increase of stock shall take place unless the same shall be done by a vote of two-thirds of the whole number of shares.

Section fourth. And be it further enacted, That in all the votes, acts and doings of said corporation, each stockholder shall be entitled to as many votes as he, or she shall own shares in the capital stock, and at any meeting of said corporation, any stockholder there-

of, may be represented by proxy, and where any share or shares shall be held in partnership, said partners may give a joint vote, or may, in writing, authorise one of themselves, or any other person to vote for them.

Section fifth. And be it further enacted, That no meeting of the stockholders shall be legal, unless the owners of a majority of the whole number of shares shall be present at the same, or represented as aforesaid, and at any legal meeting as aforesaid, said stockholders may pass and establish by-laws and regulations, and appoint such officers as they shall deem necessary for the management of the business of said corporation. The fisst meeting of said corporation shall be holden at the house of Daniel Greene, in East Greenwich, on the eighteenth day of November next, and a meeting of the stockholders shall be holden annually on the first Wednesday of July, for the choice and appointment of a clerk, and such other officers for said corporation as the stockholders shall deem proper, who shall hold their respective offices for one year, and until others shall be appointed in their stead.

Section sixth. And be it further enacted, That the persons herein beforementioned, and every person who shall hereafter become a stockholder of this corporation, shall be a member so long as they respectively hold any stock therein; and said stockholders, and their rights and interests in said corporation shall at all times, and in all respects, be subject to the provisions of this act, and to the rules, regulations and by-laws of said corporation, made pursuant thereto.

Section seventh. And be it further enacted, That in all proceedings, whether in law or equity, in which said Company shall be a party, the leaving an attested copy of the writ, or summons, or other process, with the clerk, agent, or treasurer of said company, at their usual place of business, shall be deemed a sufficient service thereof; and all executions that shall issue against said corporation may be levied on the property of said corporation; and for want of sufficient property of said corporation, the stockholders, who were such at the time the debt was created, or the contract entered into, shall be liable in their estates and persons for the payment thereof, in the same manner as if such debt had been incurred, or contract entered into, by such stockholders personally; and that each and every stockholder in said corporation shall always be deemed and taken to be, to all intents and purposes, a member thereof, until such stockholder shall have sold and disposed of his stock, and given notice thereof, in one of the newspapers printed in the city of Providence, at least three weeks successively, or given public notice, in manner afore said, that he is no longer a member of said company.

Section eighth. And be it further enacted, That if the individual property of any stockholder, or stockholders, shall be sold for the payment of the debt of the corporation, or if any individual stockholder, or stockholders, shall be compelled to pay such debt, or any greater proportion thereof than such stockholder or stockholders proportion of said debt, according to the stock held by him, or them, in the capital of said company, or corporation, then such stock-

holder, or stockholders, shall be entitled to an action, in his, or their individual name, or names, against said corporation, for the recovery of the money so paid; or such stockholder, or stockholders, shall have his or their action on the case against the other stockholders, for the amount so paid over and above his, her, or their proportion of said debt.

Section ninth. And be it further enacted, That the shares of the stockholders shall be liable to attachment, at the suit of a creditor of such stockholder, and be liable to be levied on by execution; and that a deed from the officer holding such execution, to a purchaser at public auction, on said execution, shall entitle the purchaser to the same right and interest in the share, or shares, of said corporation, so sold, that the original stockholders had therein; and that the attachment of such stock may be made in the same cases, and with the same effect, only as the creditor might attach, and as such attachment might have upon the other personal property of such stockholders; and such attachment, or levy, shall be made by leaving an attested copy of the writ, or execution, with the officer's return thereon, with the clerk, or agent, of said corporation, at their usual place of business, and with the town clerk of the town of East Greenwich.

Section tenth. And be it further enacted, That the real and personal estates, goods, chattels, and effects, rights and credits, now holden or owned, as tenants in common, by the persons hereinbefore named, and their associates, being the property and estates, goods and chattels, of the said persons, as composing the company called "The Union Steam Mill Company," be, and the same are absolutely vested in, and declared to be, the property, goods and estates, rights and credits, of the corporation hereby created, to be holden by the stockholders, as hereinbefore provided, subject, however, to all the liabilities, debts, contracts, and agreements of the said Union Steam Mill Company.

Section eleventh. And be it further enacted, That the stock, or shares, in said corporation shall be transferable by deed, in the same way and manner, and with the same formalities and legal requisites, as are necessary to the validity of the sale of real estate, by the laws of this State, and shall be recorded in the town clerk's office, and also by the clerk of the corporation, in a book to be kept by him for that purpose.

Section twelfth. And be it further enacted, That this act, and every thing herein contained, shall be at all times subject to all acts of this General Assembly, in amendment or repeal thereof, or in any way affecting the same.

True copy—Witness,

(Signed) HENRY BOWEN, *Sec'ry.*

Amendment to foregoing Act.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
In General Assembly.

June Session, A. D. 1836.

An Act to explain and amend an act entitled, "An Act to incorporate the Union Steam Mill Company."

Whereas, by the act to which this act is in amendment, Daniel Greene, William P. Salisbury, and Rufus W. Dickinson, and their associates, were created and made a body politic and corporate, as in said act is set forth, but in the body of said act the name of said body corporate was omitted; and whereas said Daniel Greene, and others, have petitioned this General Assembly to explain and amend said act of incorporation:

Be it enacted by the General Assembly, and by the authority thereof it is enacted, That the name of said body politic and corporate, created by the aforesaid act, was intended to be, and shall be, the Union Steam Mill Company; and that by that name, the said corporation shall hold, exercise, and enjoy all the rights, privileges, and immunities, and be subject to all the duties and liabilities granted, created, or imposed by the act to which this act is in amendment.

True copy—Witness:
(Signed) HENRY BOWEN, *Sec'ry.*

Act in amendment of foregoing.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
In General Assembly.

October Session, A. D. 1836.

An Act, in revival and amendment of an act entitled, "An Act to incorporate the Union Steam Mill Company," and of an act entitled, "An Act to explain and amend an act entitled, An Act to incorporate the Union Steam Mill Company."

Whereas, Daniel Greene, William P. Salisbury, and Rufus W. Dickinson have petitioned this General Assembly, representing that they and their associates were created and made a body politic and corporate, as is set forth in said act, passed at October session of this General Assembly, 1835; and said act to explain and amend the same, passed at June session of said General Assembly, 1836, but that the stockholders of said corporation failed to hold their annual meeting, on the first Wednesday of July, 1836, for the choice and appointment of their clerk and other officers, according to a provision in said act of incorporation; and praying that said act of incorporation, and said act to explain and amend the same, may be

revived and amended; and that they and their associates be constituted a body politic and corporate, according to the provisions of said acts:

Be it enacted by the General Assembly as follows:

Section first. Said act of incorporation, and said act to explain and amend the same, are hereby revived, and the said petitioners and their said associates are hereby made a body politic and corporate, by the name and style of the Union Steam Mill Company, and are hereby vested with all the powers, rights, and privileges, and made subject to all the duties, liabilities, and regulations granted and provided in said act of incorporation, and said act to explain and amend the same.

Section second. A meeting of the stockholders of said corporation, shall be holden at the house of Daniel Greene, in East Greenwich, on Wednesday, the twenty-third day of November, 1836; and a meeting of said stockholders shall be holden annually on the first Wednesday of July, for the choice and appointment of a clerk, and such other officers of said corporation as the stockholders shall deem proper, who shall hold their respective offices for one year, and until others shall be appointed in their stead.

Section third. So much of the fifth section of said act of incorporation as provides for the annual meeting of stockholders, for the choice of officers, is hereby repealed.

Section fourth. This act, and every thing herein contained, shall be at all times subject to all acts of this General Assembly, in amendment or repeal thereof, or in any wise affecting the same.

True copy—Witness:

(Signed) HENRY BOWEN, *Sec'ry.*

Records of the Union Steam Mill Company.

At a meeting of the Union Steam Mill Co., holden at the dwelling house of Daniel Greene, on Wensday evening, 23d November, 1836, Daniel Greene was appointed chairman, and R. W. Dickinson sec'ry and voted unanimously the charter granted by the General Assembly at their October session, 1836, with the amendments of June session, 1836, be, and the same are hereby received and accepted.

Voted unanimously, That R. W. Dickinson be, and he is hereby chosen, Clerk of this corporation, to hold his office according to the charter.

Voted unanimously, That the other officers of the corporation shall be, an Agent and three Directors; Agent to act as treasurer, whose duty it shall be to make purchases and contracts for the corporation, and generally to manage, transact, and conduct their affairs and business, and to exhibit a semi-annual statement of the accounts and affairs of the corporation, on the last Wensday in January, and first Wensday in July, and forward a copy to each of the stockholders.

Voted, That meetings of the corporation shall be notified by the clerk, at the request of the holders of twenty shares, and also when

ordered by the directors; the stockholders shall be notified, by notice, in writting, left at the residence of each stockholder residing in East Greenwich, or within one mile thereof, at least four days before the time of holding such meeting; and the notice to other stockholders shall be put into the post-office, at least ten days before the meeting; and the notices shall specify the particular object of the meeting; and in case of the absence or inability of the clerk, such meeting may be called, and notice given, by the agent, or either of the directors.

Voted unanimously, That the stock of the corporation shall consist of one hundred and twenty shares, at dollars each.

Voted, That there be three directors; and William P. Salisbury, Joseph Toney, and Jeremiah Smith, were unanimously chosen.

Voted, That Daniel Greene be, and is hereby chosen, Agent of the corporation.

Voted, That this meeting be adjourned to the second Wensday in December next, to meet at the dwelling house of Daniel Greene, in East Greenwich, R. I., at six o'cl'k, P. M.

EAST GREENWICH, Oct. 21, 1837.

R. W. DICKINSON, Esq.,
Cl'k U. S. Mill Company:

Sir—You are hereby requested to call a meeting of the stockholders of the Union Steam Mill Co., to meet at the office of said company, on Wensday evening next, 25th inst., at 6½ o'cl'k, P. M., to take into consideration the expediency of making a mortgage deed to the R. I. Central Bank, to secure them for moneys loaned said company; also, to take into consideration the expediency of securing other confidential debts.

(Signed) DANIEL GREENE.

The above was received 21st October, 1837, at fifteen minutes past six o'clock, P. M.

21 October, 1837.

TO DANIEL GREENE:

Sir—A special meeting of the stockholders of the Union Steam Mill Company will be holden, at the office of said Company, on Wensday, at 6½ o'cl'k, P. M., to take into consideration the expediency of securing the Rhode Island Central Bank, by mortgage of moneys loaned them, said comp'y, and to take into consideration the expediency of securing other confidential debts.

(Signed) R. W. DICKINSON,
Clerk of U. S. M. Co.

To R. W. DICKINSON:

Sir—A special meeting of the stockholders of the Union Steam Mill Co. will be held at the office of said Co. on Wensday, at 6½ o'clk. P. M., to take into consideration the expediency of securing the Rhode Island Central Bank by mortgage of moneys loaned them, said company, and to take into consideration the expediency of securing other confidential debts.

(Signed) R. W. DICKINSON,
Clerk of U. S. M. Co.

Copies of the above notices were left with the above-named persons, on the 21st October, 1837, at 6¾ o'clk. P. M.

R. W. DICKINSON,
Clerk U. S. M. Co.

The foregoing meeting stands adjourned to Monday, the 30th October, current, at same place at 6½ o'clk. P. M.

R. W. DICKINSON, *Clerk.*

East Greenwich, 21 Oct. 1837.

October 30th, at 6½ o'clk. met and adjourned the foregoing meeting to the evening of the 31st of October, current at 6½ o'clk. P. M. at same place.

R. W. DICKINSON, *Cl'k.*

Met October 31st, at 6½ o'clk. P. M., and adjourned to Satturday, the 4th November next, to meet at the same place at 6½ o'clk. P. M.

R. W. DICKINSON, *Cl'k.*

Met November 4th, at 6½ o'clk. P. M., and adjourned to Wensday, 8th November, current, at same place, and 6½ o'clk. P. M.

R. W. DICKINSON, *Cl'k.*

Met November 8th, at time and place appointed, and adjourned to Wensday, 15th, to meet at same place, and at 6½ o'clk. P. M.

R. W. DICKINSON, *Cl'k.*

Met November 15th, at time and place appointed, and adjourned to Saturday, 18th November, current at same place, and at 6½ o'clk. P. M.

R. W. DICKINSON.

Met November 18th, at time and place appointed, and it was unanimously resolved and voted that Daniel Greene, the agent of this company, be, and he hereby is authorized, empowered, and directed, to make, execute, seal, and deliver, in the name and behalf of this corporation, a mortgage deed, with warrantee to Cyrus Butler, to secure the payment of certain sums of money, amounting to between sixteen and seventeen thousand dollars, on the mill, machinery, and

fixtures, and with all the privile*d*ges, and together with seven dwelling-houses and appurtenances thereto belonging, meaning all the real estate of said company. Also to make, execute, seal, and deliver a second mortgage deed of said mill, fixtures, and appurtenances, in trust, to Welcome A. Greene and Isaac Brown, of Providence, to secure the payment of certain sums of money now due from said Co., amounting to between twenty-nine and thirty-one thousand dollars. Also a third mortgage deed of said mill, fixtures, and appurtenances, to the President, Directors, and Co. of the Rhode Island Central Bank, to secure the payment of ten thousand dollars. And on motion it was voted to adjourn, to meet at same place on Monday, the 20th November, current at 9 o'clk. A. M.

(Signed) DANIEL GREENE, *Chair'n.*
R. W. DICKINSON,
Clerk of said Corporation.

Met 20th November, 1837, at 9 o'clk. A. M., at place appointed; present, Daniel Greene and R. W. Dickinson; and it was unanimously resolved and voted, that the resolve of this corporation, passed on the 18th day of November inst., appointing Daniel Greene agent of this corporation, to execute certain mortgage deeds in behalf of this corporation, be, and the same are hereby repealed.

Voted that a mortgage of all the lands, buildings, steam engine, and machinery of this corporation, with all the privile*d*ges and appurtenances thereof, be made to Cyrus Butler, of Providence, with the usual covenants of seisin and warranty, to secure to him the payment of a note of this date, for sixteen thousand four hundred and fifty-nine dollars, payable in two years from date with interest, semi-annually, and that Daniel Greene be the agent of this corporation, to sign, seal, acknowledge, and deliver the said deed in behalf of this corporation.

Voted, that a mortgage of all the lands, buildings, steam engine, and machinery of this corporation, with all the privileges and appurtenances thereof, be made subject to the beforementioned mortgage to Cyrus Butler, to Isaac Brown, Welcome A. Greene, and Benjamin C. Harris, as joint tenants in fee simple and in trust for the use and benefit of the persons and corporations hereafter named, and their assigns. Holders of the notes hereafter mentioned, and with the usual covenants of seisin and warranty to secure the payment of the following notes of this date, payable in two years from date, with interest semi-annually, to wit: One to Cook and Brown, for three thousand and nine-two dollars and forty-six cents; one to Welcome A. Greene, for three thousand dollars; one to Welcome A. Greene, for twenty-eight hundred and three dollars and sixty-four cents; one to Abigail Greene, for two thousand dollars; one to Mechanic*k*s Banks, for two thousand fifty-six dollars and six cents; one to Mechanic*k*s Bank for thirty-six hundred and seven dollars and seventy-eight cents; one to Phenix Iron Foundry, for fifteen hundred and twenty-nine dollars and fifty cents; one to Edward Paddleford, for twenty-five hundred and seventy-nine dollars forty-seven cents; one to New-

port Exchange Bank, for forty one hundred and twenty-eight dollars seventy-cents; one to Weybosset Bank, for two thousand and sixty-three dollars and ninety-one cents; one to James Eames, for nine hundred and eighty-two dollars and twenty-four cents; and also to secure the fulfillment of a covenant on the part of this corporation, to be invested in said deed. That this corporation will at all times, until the payment of said notes, keep their said machinery in repair, and their said factory, and dwelling-houses, and machinery insured against loss or damage by fire to an amount equal to the sums due on said note to Cyrus Butler, and on the notes hereinbefore mentioned; and that this corporation will assign the policy or policies of insurance to the said Cyrus Butler in trust, to apply any money he may receive thereon, first to the payment of any sum due him upon the note secured in the mortgage deed to him; and secondly, to the proportional payment of the notes before mentioned, and also to authorize the said Isaac Brown, Welcome A. Greene, and Benjamin C. Harris, in case this corporation do not insure as aforesaid, to procure insurance on said factory, and dwellings, and machinery, to the amount above mentioned, and to apply any monies received by them thereon; first to pay all the expenses of insurance; secondly, in payment of any sums of money due to said Cyrus Butler, and secured in his said mortgage, and then to the proportional payment of the notes above mentioned, and to secure the payment of all expenses of insurance obtained by them, and that Daniel Greene be the agent of this corporation to sign, seal, acknowledge, and deliver the said mortgage deed in behalf of this corporation.

Voted, that a mortgage deed of all the land, buildings, steam engine, and machinery of this corporation, with all the privileges and appurtenances thereof, be made to the Rhode Island Central Bank, to secure the payment of the sum of ten thousand dollars, in part payment of note of twenty thousand dollars, given by said Union Steam Mill Company, payable in twelve months from the date thereof to said Bank, subject to the mortgage to Cyrus Butler, and mortgage to Isaac Brown, Welcome A. Greene, and Benjamin C. Harris, as trustees, given this day, and that Daniel Greene be the agent of this corporation to sign, seal, acknowledge, and deliver the said mortgage deed in behalf of this corporation, and voted to adjourn to meet at this place at 6 o'clock, P. M., on Tuesday, 21st November current.

Signed DANIEL GREENE, *Chairman.*

R. W. DICKINSON, *Clerk.*

Met November 21st, at time and place appointed.

Present: Daniel Greene and R. W. Dickinson, and voted to adjourn to Saturday, the 25th November current, at same place, at 6 o'clock P. M.

R. W. DICKINSON, *Clerk.*

Met November 25, 1837, at time and place appointed.

Present: R. W. Dickinson and Daniel Greene, and adjourned to Monday, 27th November current, at 6 o'clock P. M., to meet at same place.

R. W. DICKINSON, *Clerk.*

Met 27th November, 1837, at time and place appointed.

Present: R. W. Dickinson, and adjourned to meet at same place on Saturday, the 2d December, 1837, at 6 o'clock P. M.

R. W. DICKINSON, *Clerk.*

Met 2d December, 1837, at time and place appointed.

Present: Daniel Greene and R. W. Dickinson, and voted, that a mortgage deed of all the lands, buildings, steam engine, and machinery of this corporation, with all the privileges and appurtenances thereof, be made to Asa Pike, Joseph S. Cooke, and Amasa Manton, of Providence, in trust, to secure the payment of all such notes as are at, and previous to this date, were endorsed by John Edwin Brown, of Providence, Stephen Greene, and Robert B. Hall, of East Greenwich, either individually or collectively. Provided, that the creditors who hold paper endorsed by either of the above named gentlemen, agree not to commence any suit against either principal or endorser for the term of two years from the date of said mortgage deed. Also, to secure the payment of all such notes as may hereafter grow out of any such endorsed note by a renewal thereof, or of any part of the same. This mortgage deed subject to the mortgage deed of Cyrus Butler, mortgage deed to Isaac Brown, Welcome A. Greene, and Benjamin C. Harris, as trustees. Also, further subject to a mortgage to the Rhode Island Central Bank, for ten thousand dollars, in part payment of note given said Bank, for twenty thousand dollars, payable in twelve months from the date thereof, and voted, to adjourn to Saturday, the 9th of December current, to meet at same place at 6 o'clock P. M.

(Signed) DANIEL GREENE, *Chairman.*
R. W. DICKINSON, *Clerk.*

Met at time and place appointed, and adjourned to Saturday, the 16th December current, to meet at same place at 6 o'clock P. M., December 9, 1837.

R. W. DICKINSON, *Clerk.*

Met at time and place appointed, and adjourned to Saturday, the 23d December current, to meet at same place at six o'clock P. M., December 16, 1837.

R. W. DICKINSON, *Clerk.*

Met at time and place appointed.

Present: Daniel Greene and R. W. Dickinson, and adjourned to Saturday, the 30th December current. Then to meet at same place at six o'clock P. M. 23d December, 1837.

R. W. DICKINSON,
Clerk of Union Steam Mill Co.

30th December, 1837. Met pursuant to adjournment.

Present: Daniel Greene and R. W. Dickinson, and adjourned to Saturday, the sixth of January, 1838, then to meet at same place at 6½ o'clock P. M. R. W. DICKINSON, *Clerk.*

This 6th January, 1838, met pursuant to adjournment.

Present: Daniel Greene and R. W. Dickinson, and adjourned to Saturday, the 13th January, 1838, then to meet at same place at 6½ P. M.

R. W. DICKINSON.

Copy of Deed, William P. Salisbury to Daniel Greene.

Know all men by these presents, that I, William P. Salisbury, of East Greenwich, in the county of Kent, and State of Rhode Island and Providence Plantations, merchant, for and in consideration of the sum of two thousand five hundred dollars well and truly paid by Daniel Greene of said East Greenwich, manufacturer, the receipt whereof I do hereby acknowledge; have granted, bargained, sold, assigned, conveyed, released, and forever quit claimed, and by these presents, do grant, bargain, sell, assign, convey, release, and forever quit claim unto him, the said Daniel Greene, his heirs and assigns, forever, all and singular my right, title, and interest, in and to the lands, tenements, and hereditaments, and estate and estates, both real and personal of the Union Steam Mill Company, situate in said East Greenwich, and all and singular my right, title, and interest in and to the goods and chattels, machinery, apparatus, fixtures, tools, stock in trade, choses in action, demands due and owing said Company, and belonging to the same; hereby meaning and intending to convey my whole interest, property, and estate in said Union Steam Mill Company, and in the estate and estates of said Company, both real and personal, and in possession or action.

To have and to hold the same, with all the privileges and appurtenances thereof and thereunto belonging to him, the said Daniel Greene, his heirs and assigns, forever, to his and their only use, benefit, and behoof, forever.

In witness whereof, I hereunto set my hand and seal, this eighteenth day of May, in the year of our Lord one thousand eight hundred and thirty-seven. 1837.

WILLIAM P. SALISBURY. [L. S.]

Signed, sealed, and delivered in the presence of

SARAH WHITING,
NATHAN WHITING.

KENT, *sc.*

At East Greenwich, May 22d, A. D. 1837. Personally appeared William P. Salisbury, to the aforewritten instrument, and acknowledged the same to be his free and voluntary act and deed, hand and seal.

Before me, NATHAN WHITING, *Town Clerk.*

Recorded and compared with the original, Nov. 7th, 1838.
By NATHAN WHITING, *Town Clerk.*

KENT, *sc.*

TOWN CLERK'S OFFICE, November 12th, A. D. 1838.

At East Greenwich, I certify, that the above is a true copy of record in said office, duly examined and compared by me.

Witness: NATHAN WHITING, *Town Clerk.*

Copy of Notice to Burrington Anthony.

PROVIDENCE, June 28th, 1838.

TO BURRINGTON ANTHONY, ESQ.

SIR: Notice is hereby given you, that the property advertised by you for sale on the 29th instant, at East Greenwich, under levy, on executions issued from the circuit court of the United States for the Rhode Island district, in favor of John Boynton and Garnwell and Collins, against the Union Steam Mill Company, is claimed by the undersigned as their property, and that they will look to you for any damages which they may sustain in consequence of the attachments on sale.

Signed ISAAC BROWN,
WELCOME A. GREENE,
For selves Benj. C. Harris, as Trustees.
Signed CYRUS BUTLER,

PROVIDENCE, June 28th, 1838.

We hereby certify that we this day delivered and examined copy of the within to Burrington Anthony, Esq.

JABEZ J. POTTER.
ROGER W. POTTER.

Copy of Demand of Goods and Chattels.

PROVIDENCE, June 28th, 1838.

To BURRINGTON ANTHONY, ESQ.

SIR: Having been informed that you have seized on execution, and are about to sell certain machinery and other property now in the Union Steam Mill Factory in East Greenwich, we, the undersigned, claiming said property to be ours, hereby demand of you that you forthwith deliver the same to us.

Signed ISAAC BROWN,
WELCOME A. GREENE,
For selves and Benjamin C. Harris, as Trustees.
Signed CYRUS BUTLER.

PROVIDENCE, June 28th, 1838.

We hereby certify that we this day delivered an examined copy of the within to Burrington Anthony, Esq.

JABEZ J. POTTER,
ROGER W. POTTER.

Petition for Writ of Error.

RHODE ISLAND DISTRICT, *Sc.*
Circuit Court of the United States:

In the action of CYRUS BUTLER
vs.
BURRINGTON ANTHONY, Marshal.

To the Hon. John Pitman, Judge of the United States District Court for the district of Rhode Island.

The said Burrington Anthony respectfully represents, that at the last November term of said circuit court, judgment was rendered against him in favour of the plaintiff in said cause, upon the verdict of jury thereon. That the def't excepted to the admission of certain evidence offered by the pl'ff, and admitted by the court, and also excepted to the charge of the court to the jury, as fully appears in the bill of exceptions filed in said cause. Whereupon he prays that a writ of error may be allowed in said cause, returnable to the next term of the Supreme Court of the United States, which commences on the second Monday of January, A. D. 1839.

By PEARCE & TURNER,
Attornies for Def't.

Jan'y 5, 1839.

I acknowledge notice of the within.

R. W. GREENE,
Att'y to Cyrus Butler.

Jan'y 5th, 1839.

Let the writ of error issue, as is within prayed for, the def't filing a sufficient bond in the penal sum of five hundred dollars, with the usual condition for the prosecution of the said writ of error, and the payment of costs; said bond to be filed when the citation is signed by one of the judges of the said circ't court, agreeably to the statute in such case provided.

JOHN PITMAN,
District Judge U. S. for R. I. Dist.

To the CLERK OF THE CIRCUIT COURT, U. S.
For Rhode Island District.

Bond.

Know all men by these presents, that we, Burrington Anthony, of Providence, in the county of Providence, Marshal, as principal, and Samuel Y. Atwell, of Gloucester, in said county, and Dutee J. Pearce, of Newport, in the county of Newport, as sureties, are held and firmly bound unto Cyrus Butler, of Providence, in the sum of five hundred dollars, to be paid to the said Cyrus Butler, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at Providence, the fifth day of January, in the year of our Lord one thousand eight hundred and thirty-nine.

The condition of this obligation is such, that whereas the said Burrington Anthony, Marshal, has prayed for a writ of error, to carry up to the Supreme Court of the United States a certain cause which was determined at the Circuit Court of the United States, for the district of Rhode Island, holden at said Providence on the fifteenth day of November last. Now, if the said Burrington Anthony, the defendant in said cause, shall prosecute said writ of error to effect, before said Supreme Court of the United States, or in default thereof shall pay all costs that he shall be adjudged to pay in the premises, then this obligation to be void.

BURRINGTON ANTHONY, [SEAL.]
SAML. Y. ATWELL, [SEAL.]
DUTEE J. PEARCE. [SEAL.]

Signed, sealed, and delivered, in presence of us,
JOHN W. SMITH,
L. C. EATON.

I approve of this bond in the case of Cyrus Butler, pl'ff, against Burrington Anthony, def't.

JOHN PITMAN,
District Judge U. S. for s'd District.

Writ of Error.

UNITED STATES, *sc.*

The President of the United States to the Judges of the Circuit Court of said United States, holden within and for the Rhode Island District:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Cyrus Butler, of Attleborough, in the Massachusetts district, a citizen of the State of Massachusetts, plaintiff, and Burrington Anthony, of Providence, in the Rhode Island district, Esquire, Marshal of said Rhode Island district, a citizen of the State of Rhode Island, and Providence Plantations, defendant, in a plea of replevin a manifest error has intervened to the great damage of the said defendant, as has, in his complaint, been stated; and it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid, in this behalf. You are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the chief justice and associate justices of the Supreme Court of the United States, on the second Monday of January instant, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Hon. Roger B. Taney, our Chief Justice of the said Supreme Court, this seventh day of January, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-third.

JOHN T. PITMAN.
Clerk.

Allowed Jan. 12, 1839.

JOHN PITMAN,
District Judge.

RHODE ISLAND DISTRICT, *sc.*

The President of the United States of America to the Marshal of said District, or to his deputy, greeting:

You are hereby required to make known to Cyrus Butler, of Attle-

borough, in the Massachusets district, and a citizen of the State of Massachusetts, that in the action of replevin, wherein he, the said Cyrus Butler, was plaintiff, and Burrington Anthony of Providence, in the Rhode Island District, Esquire, Marshal of said Rhode Island district, and a citizen of the State of Rhode Island, and Providence Plantations, was defendant, and in which judgment was rendered for said plaintiff, at the November term of the circuit court of the United States, holden at Providence, within and for the Rhode Island district, on the fifteenth day of November, A. D. 1838, the said defendant hath sued out a writ of error to the Supreme Court of the United States next to be holden at Washington, in the District of Columbia, on the second Monday of January instant. And that he, the said Cyrus Butler, be then and there before said Supreme Court to hear the proceedings on the said writ of error, if he shall see fit, and further to do and receive what, by the said Supreme Court, shall be ordered, adjudged, and decreed in this behalf, and make due return of this citation, with your doings thereon.

In witness whereof, I have caused the seal of said circuit [SEAL.] court to be hereunto affixed, and have subscribed these presents, this seventh day of January, A. D. 1839.

JOHN PITMAN.
District Judge, U. S. for R. I. District, and one of the Judges of s'd Circuit Court.

UNITED STATES OF AMERICA, Rhode Island District, *sc.*

Providence, Jan'y 9th, 1839.

Made service of the within citation by reading the same to the within named Cyrus Butler, as commanded.

Services $2.
Travel

BURRINGTON ANTHONY.
Marshal for R. I. District.

UNITED STATES OF AMERICA, Rhode Island District, *sc.*

Clerk's Office, Circuit Court, at Providence, January 14, A. D. 1836.

I, John T. Pitman, clerk of said circuit court, do hereby certify that the preceeding forty-two pages contain a true transcript of the record of the case of Cyrus Butler vs. Burrington Anthony in replevin; also the original bill of exceptions, and true copies of the papers referred to in said bill; and also, the copy of the petition for a writ of error, the order thereon, and of the bond filed in said office, to prosecute the same, duly compared and examined by me.

And also that the original writ of error and citation is annexed to said transcript, &c.

In testimony whereof, I have hereunto affixed the seal of
[SEAL.] said court, and set my hand on the day and year above written.

JOHN T. PITMAN,
Clerk.

1044.

SUPREME COURT OF THE UNITED STATES.

No. 90.

THE UNITED STATES PLAINTIFF,

VERSUS

JAMES E. HARDYMAN.

ON A CERTIFICATE OF DIVISION IN OPINION, FROM THE CIRCUIT COURT U. S. FOR E. VIRGINIA.

Pleas at the City Hall, in the city of Richmond, before the court of the United States, for the fifth circuit and Eastern district of Virginia, on Monday the 26th day of November, 1838.

Be it remembered, that at this same term, to wit: at a court of the United States, for the fifth circuit and eastern district of Virginia, held at the City Hall, in the city of Richmond, on Monday, the 19th day of November, 1838, John Brockenbrough, Gentlemen, foreman, John L. Tate, Robert Gwathmey, Nicholas Mills, Thomas B. Bigger, William Rowlett, Robert C. Williamson, Corbin Braxton, Jacob Sheldon, Jesse Cole, William M. Moody, James Lee, George W. Taylor, Charles L. Wingfield, Richard Henley, William C. Allen and Joseph Segar, Gentlemen, were sworn a Grand Jury, for the body of this district, and having received their charge, withdrew from the bar, and after some time returned into court, and presented "an indictment against James E. Hardeman for a misdemeanor, a true bill;" which indictment is in the words and figures following to wit:

In the circuit court of the United States, for the fifth circuit and eastern district of Virginia.

The Grand Jurors of the United States of America, within and for the district of Virginia aforesaid, upon their oaths present, that Winston a negro man, slave late of the county of Louisa, and the property of Waller Halladay of said county, with force and arms, at the county of Louisa aforesaid, within the State and eastern district of Virginia, aforesaid, and within the jurisdiction of the court of the United States, holden in and for the fifth circuit and eastern district of Virginia, aforesaid; unlawfully and wilfully, did steal and embezzle, from the mail of the United States, divers, to wit, ten promissory notes, called treasury notes, for the payment of divers sums of money, amounting in the whole to a certain sum of money, to wit, the sum of six hundred dollars of lawful money of the United States, and of the value of six hundred dollars of like lawful money; contrary to the form of the act of Congress, in such case, made and provided, and against the peace and dignity of the United States of America.

And the jurors aforesaid, upon their oath aforesaid, do further present, that James E. Hardyman, late of the county of Louisia, aforesaid, yeoman, afterwards, to wit, on the fifth day of May, in the year last aforesaid, with force and arms, at the county aforesaid, and with in the jurisdiction, aforesaid, one promissory note called a Treasury note, for the payment of fifty dollars, with interest at the rate of five per centum, and of the value of fifty dollars, bearing date the 27th day of March, 1838, marked with the letter B, and numbered 8,645, payable to J. H. Wheeler or order, and purporting to be endorsed by John H. Wheeler, to Irwin and Elms, and by the said Irwin and

Elms to Reeves and Fraley; also one other promissory note, called a treasury note, for the payment of fifty dollars, with interest at the rate of five per centum, and of the value of fifty dollars, bearing date the 27th day of March, 1838, marked with the letter A, and numbered 8,644, payable to J. H. Wheeler or order, and purporting to be endorsed by John H. Wheeler to Irwin and Elms, and by the said Irwin and Elms to Reeves and Fraley; also one other promissory note, called a treasury note, for the payment of fifty dollars, with interest at the rate of one per centum, and of the value of fifty dollars, bearing date the 19th December, 1837, marked with the letter B, and numbered 1,184, payable to A. R. Hetzel, and purporting to be endorsed by A. R. Hetzel and Thomas J. Rogers in blank, and by John Irwin to Reeves and Fraley, the said three last mentioned promissory notes, being three of the promissory notes, so as aforesaid, unlawfully and wilfully stolen and embezzled, unlawfully and wilfully, did buy, receive and conceal, he the said James E. Hardyman, then and there well knowing, the said three last mentioned promissory notes to have been unlawfully and wilfully stolen, and embezzled, as aforesaid; contrary to the form of the act of Congress, in such case made and provided, and against the peace and dignity of the United States of America.

2. And the jurors aforesaid, upon their oaths aforesaid, do further present, that at a court held for the county of Louisa, in the State and eastern district of Virginia, aforesaid, on the 13th day of August, 1838, at the court-house, and before five of the justices of the said county, Winston, a negro man slave, late of the said county, and the property of Waller Holliday of the county, aforesaid, was duly convicted, for that he, the said Winston, theretofore, to wit, on the first day of May, 1838, with force and arms, at the county and district, and within the jurisdiction aforesaid, divers, to wit, ten other promissory notes, called treasury notes, for the payment of divers sums of money, amounting in the whole to a certain sum of money, to wit, the sum of six hundred dollars of lawful money of the United States, and of the value of six hundred dollars of like lawful money; the said last mentioned promissory notes, being of the goods and chattels of Reeves and Fraley of Philadelphia, then and there being found, feloniously did steal, take and carry away from the mail of the United States, contrary to the form of the act of Congress, in such case made and provided, and against the peace and dignity of the United States of America, as by the record thereof, remaining filed in the said court of Louisa county, may more fully, and at large appear.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said James E. Hardyman, afterwards, to wit, on the day and year last aforesaid, with force and arms, at the county and district, and within the jurisdiction aforesaid, one promissory note, called a treasury note, for the payment of fifty dollars with interest, at the rate of five per centum, and of the value of fifty dollars, bearing date the 27th day of March, 1838, marked with the letter B, and numbered 8,645, payable to J. H. Wheeler or order, and purporting to be endorsed by John H. Wheeler, to Irwin and Elms, and by the said Irwin and Elms to Reeves and Fraley; also one other promisso-

ry note called a treasury note, for the payment of fifty dollars, with interest, at the rate of five per centum, and of the value of fifty dollars, bearing date the 27th day of March, 1838, marked with the letter A, and numbered 8,644, payable to J. H. Wheeler or order, and purporting to be endorsed by John H. Wheeler to Irwin and Elms, and by the said Irwin and Elms to Reeves and Fraley; also one other promissory note called a treasury note, for the payment of fifty dollars with interest, at the rate of one per centum, and of the value of fifty dollars, bearing date the 19th December, 1837, marked with the letter B, and numbered 1,184, payable to A. R. Hetzel, and purporting to be endorsed by A. R. Hetzel and Thomas J. Rogers in blank, and by John Irwin to Reeves and Fraley; the said three last mentioned promissory notes, being three of the promissory notes, so as aforesaid, feloniously stolen, taken and carried away, unlawfully and wilfully, did buy, receive and conceal, he the said James E. Hardyman, then and there well knowing the said three last mentioned promissory notes, to have been feloniously stolen, taken and carried away, as aforesaid, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the said United States of America.

3. And the jurors aforesaid, upon their oath aforesaid, do further present, that at a court held for the county of Louisa, in the State and eastern district of Virginia, aforesaid, on the 13th day of August, 1838, at the court-house, and before five justices of the said county, Jack, a negro man slave, late of the said county, and the property of Richard S. Duke, of the county aforesaid, was duly convicted, for that he, the said Jack, theretofore, to wit, on the first day of May, 1838, with force and arms, at the county and district, and within the jurisdiction aforesaid, divers, to wit, ten other promissory notes, called treasury notes, for the payment of divers sums of money, amounting in the whole to a certain sum of money, to wit, the sum of six hundred dollars of lawful money of the United States; and of the value of six hundred dollars, like lawful money, the said last mentioned promissory notes, being of the goods and chattels of Reeves and Fraley of Philadelphia, then and there being found, feloniously did steal, take and carry away from the mail of the United States, contrary to the form of the act of Congress, in such case made and provided, and against the peace and dignity of the United States of America, as by the record thereof, remaining filed in the said court of Louisa county, may more fully and at large appear.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said James E. Hardyman afterwards, to wit, on the day and year last aforesaid, with force and arms, at the county and district, and within the jurisdiction aforesaid, one promissory note called a treasury note, for the payment of fifty dollars with interest, at the the rate of five per centum, and of the value of fifty dollars, bearing date the 27th day of March, 1838, marked with the letter B, and numbered 8,645, payable to J. H. Wheeler or order, and purporting to be endorsed by John H. Wheeler to Irwin and Elms, and by the said Irwin and Elms to Reeves and Fraley; also one other promissory note, called a treasury note, for the payment of fifty dollars with interest, at the rate of five per centum, and of the value of

fifty dollars, bearing date the 27th day of March, 1838, marked with the letter A, and numbered 8,644, payable to J. H. Wheeler or order, and purporting to be endorsed by John H. Wheeler to Irwin and Elms, and by the said Irwin and Elms to Reeves and Fraley; also one other promissory note, called a treasury note, for the payment of fifty dollars, with interest at the rate of one per centum, and of the value of fifty dollars bearing date the 14th of December, 1837, marked with the letter B, and numbered 1,144, payable to A. R. Hetzel and Thomas J. Rogers in blank, and by John Irwin to Reeves and Fraley, the said three last mentioned promissory notes, being three of the promissory notes, so as aforesaid, feloniously stolen, taken and carried away, unlawfully and wilfully, did buy, receive and conceal, he the said James E. Hardyman, then and there well knowing the said three last mentioned promissory notes to have been feloniously stolen, taken and carried away, as aforesaid, contrary to the form of the act of Congress in such case, made and provided, and against the peace and dignity of the said United States of America.

4th. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said James E. Hardyman, on the day and year last aforesaid, with force and arms, at the county and district aforesaid, and within the jurisdiction aforesaid, one other promissory note, called a treasury note, for the payment of fifty dollars, with interest at the rate of five per centum, and of the value of fifty dollars, bearing date the 27th day of March, 1838, marked with the letter B, and numbered 8,645, payable to J. H. Wheeler or order, and purporting to be endorsed by John H. Wheeler to Irwin and Elms, and by the said Irwin and Elms to Reeves and Fraley; also one other promissory note, called a treasury note, for the payment of fifty dollars, with interest at the rate of five per centum, and of the value of fifty dollars, bearing date the 27th March, 1838, marked with the letter A, and numbered 8,644, payable to J. H. Wheeler, and purporting to be endorsed by John H. Wheeler to Irwin and Elms, and by the said Irwin and Elms to Reeves and Fraley; also one other promissory note, called a treasury note, for the payment of fifty dollars, with interest at the rate of one per centum, and of the value of fifty dollars, bearing date the 14th December, 1837, marked with the letter B, and numbered 1,184, payable to A. R. Hetzel, and purporting to be endorsed by A. R. Hetzel and Thomas J. Rogers in blank, and by John Irwin to Reeves and Fraley, by a certain evil disposed person, to the jurors aforesaid, yet unknown, then lately before, unlawfully and wilfully stolen, from the mail of the United States, unlawfully and wilfully did buy, receive and conceal, he, the said James E. Hardyman, then and there well knowing, the said three last mentioned promissory notes, to have been unlawfully and wilfully stolen, as aforesaid, from the mail of the United States, as aforesaid, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the said United States of America.

ROBERT C. NICHOLAS,
United States Attorney, for the
Eastern District of Virginia.

And on the same day, to wit, at a court of the United States for the fifth circuit and eastern district of Virginia, held at the City Hall in the City of Richmond, on Monday the 19th day of November, 1838, upon the calling of the said Hardyman, he offered by his counsel to plead to the indictment found against him, this day for a misdemeanor, and the court not being at present advised of its judgment in the premises, takes time until to-morrow to consider thereof.

And at another day, to wit: At a court of the United States for the fifth circuit and eastern district of Virginia, held at the City Hall in the City of Richmond, on Tuesday, the 20th day of November, 1838.

Upon the motion of the counsel for the defendant, James E. Hardyman in this cause, made on yesterday for leave to file his plea to the indictment found against him, altho' not personally present, the court is of opinion that the said defendant be allowed to plead by counsel, and time is granted him until to-morrow to prepare the same.

And at another day, to wit: At a court of the United States for the fifth circuit and eastern district of Virginia, held at the City Hall in the City of Richmond, on Wednesday, the 21st day of November, 1838, came as well the United States by the district attorney, as the defendant James E. Hardyman, by his attorney, and thereupon the said defendant by his counsel, filed a plea of "not guilty," to the indictment preferred against him. Whereupon, on the motion of the attorney for the United States, came a jury, to wit, Robert K. Brock, John Armstead, Littleberry Carrington, James Bray, James B. Cowles, William Catlin, Francis Regnault, Robert C. Maynard, John Sarvay, Judah Myers, and George Watt, who being elected, tried and sworn, and George Stell, who being elected, tried and solemnly affirmed the truth to speak upon the issue joined, and having partly heard the evidence, were adjourned over until to-morrow morning at eleven o'clock.

And at another day, to wit: At a court of the United States for the fifth circuit and eastern district of Virginia, held at the City Hall in the City of Richmond, on Thursday, the 22d day of November, 1838, came again, as well the United States by the District Attorney, as the defendant James E. Hardyman, by his attorney, and the same jury, sworn and affirmed on yesterday to try the issue in this cause, appeared in court according to their adjournment, and from rendering their verdict were discharged by consent of the attorney for the United States, and the counsel for the defendant, and the cause continued until the next term.

And now at this day, to wit: At a court of the United States for the 5th circuit and eastern district of Virginia, held at the City Hall in the City of Richmond, on Monday, the 26th day of November, 1838, to wit, on the day and year first herein mentioned, the following was ordered to be spread upon the record. Memorandum.

When this cause was called, the accused, who had been admitted to bail, appeared by counsel and moved the court to quash the indictment which had been found against him, upon the ground that

the paper described in the said indictment are not promissory notes under the act of Congress, approved on the third day of March, 1825, under which the prisoner is indicted, and the act of Congress, approved the 12th day of October, 1837, by virtue of which the said notes were issued, describes them as treasury notes, and does not provide, nor does any other act of Congress provide any penalty for stealing those notes from the mail of the United States, or receiving them, knowing them to be stolen, and upon this motion the court being divided in opinion, the said indictment was not quashed.

In the further progress of the said case before the jury, the Attorney for the United States, offered as evidence to the jury a treasury note in the words and figures following, to wit:

Fifty. Fifty. Fifty. Fifty. Fifty. Fifty. Fifty. Fifty. Fifty. Fifty.

50 (L) 50

No. 1,184 No. 1,184. Receivable in payment

The United States,
Promise to pay, One year after date,
to A. R. Hetzel, or order, Fifty Dollars,
with the interest, at the rate of One per
centum. Washington, 14 Dec., 1837.

of all
Public dues.

Countersigned,

T. L. Smith,
Register.

John Campbell,
Treasurer of the United
States.

50 50

Fifty. Fifty. Fifty. Fifty. Fifty. Fifty. Fifty. Fifty. Fifty. Fifty.

"Endorsed"

Issued, Dec. 30, 1837.

(50) A. R. HETZEL,
THOS. J. ROGERS,
Pay to Reeves & Fraley, (50)
JOHN IRWIN.

Whereupon the counsel for the accused moved the court to exclude it from the jury as evidence, upon the ground that it does not answer the description of any one of the notes set forth in the indictment, as it bears interest after the rate, neither of five per centum nor of one per centum, but bears an interest after the rate of one mill per centum as signified by the letter "M" after the word "one" upon the *face* of the said note; and to sustain this motion the deft. proved by the collector of the port of Richmond, that he received notes such as that above described, as notes bearing interest after the rate of one mill per centum, and not one per centum, and the government so received them from him, and the letter M. aforesaid was understood to signify and be intended to mean *mill;* and also proved that the Secretary of the Treasury had issued, as far as the said collector and another witness who derived his impression from the Treasurer of the United States, and the officers of the Government knew and believed, no treasury note bearing interest after the rate of one per centum. Upon this motion the court was also divided in opinion, not being satisfied that the note did appear by its face to bear interest after the rate of one mill, and not being satisfied that it was competent to the defendant by parol evidence to explain any word or letter upon the face of the said note, so as to show what its meaning was, either by resort to any definition of it, or to the exposition of it by the practice of the Treasury Department and the officers of the Government and the public, and therefore, that it was not competent to the defendant so to explain the letter *M.* aforesaid, which appears on the face of the said note, and of which no notice is taken in the indictment for the purposes of showing that by that letter the makers of the said note intended to fix the rate of interest at one mill per centum. And thereupon, upon the motion of the accused, and with the consent of the Attorney for the United States, the court doth adjourn to the Supreme Court of the United States for its decision, the following questions, viz:

1st. Are the treasury notes issued by authority of the act of Congress passed on the 12th day of October, in the year 1838, promissory notes within the meaning of the act of Congress, approved on the third day of March, 1825, under which the prisoner is indicted, and is there a sufficient averment in the indictment in this cause of the stealing and receiving of such treasury notes?

2nd. Is the letter "*M*" which appears upon the face of the note, offered as evidence a material part of the description of the said note.

3rd. Would it be proper to receive parol evidence for the purpose of explaining the meaning of the said letter M. and proving the practice and usage of the Treasury Department and officers of the Government and others, lawful receivers of similar treasury notes, in order to show thereby the meaning intended to be attached and actually attached to the said letter M. by the Treasury Department, and others, and that by such meaning the said Treasury note bears one mill per centum interest, and not one per centum interest.

UNITED STATES OF AMERICA,
5th Circuit and Eastern District of Virginia.

I, Henry Gibson, Clerk of the Court of the United States for the fifth circuit and eastern district of Virginia, do hereby certify, that the foregoing is a true transcript of the record and proceedings upon an indictment against James E. Hardyman for a misdemeanour against the United States of America, with all things touching the same, as fully and wholly as they now exist among the records of my office.

In testimony whereof, I hereto set my hand and annexed the seal of the said Court, this fifteenth day of January, 1839.

[SEAL.]

HENRY GIBSON, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, to wit:

I, Peter V. Daniel, Judge of the Court of the United States for the eastern district of Virginia, do certify, that Henry Gibson, who hath given the proceeding certificate, is Clerk of the Court of the United States for the fifth circuit and eastern district of Virginia; and that his said attestation is in due form.

Given under my hand, this——day of January, 1839.

P. V. DANIEL.

1049.

SUPREME COURT OF THE UNITED STATES.

No. 92.

DOWNER & CO.

VERSUS

E. D. CHURCH.

10 ‹

CIRCUIT COURT U. S. MISSISSIPPI DISTRICT.

UNITED STATES OF AMERICA.

DISTRICT OF MISSISSIPPI, *ss.*

At a circuit court of the United States, in and for the ninth circuit and district of Mississippi, begun and held at Jackson, on the first Monday of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Present: The Honorable John McKinley, one of the associate justices of the Supreme Court of the United States, and the Honorable George Adams, district judge.

DOWNER & Co.
vs.
EDWARD B. CHURCH.

CIRCUIT COURT, MAY TERM, 1838.

"This was an action of *assumpsit* founded on the *second* of a foreign bill of exchange, by endorsee against endorser, for non-acceptance. The plaintiffs declared upon the '*second*' of the set of exchange, which '*second of the set*' was protested for non-acceptance, and the same, with the protest thereto attached, was read in evidence to the jury. Whereupon a question arose whether the plaintiffs could recover upon the said *second* of exchange, without producing the *first* of the same set, or accounting for its non-production, upon

which the judges were opposed in opinion. Whereupon the same is ordered to be certified to the Supreme Court of the United States, which is done accordingly under the seal of the court."

UNITED STATES OF AMERICA, *Southern District of Mississippi, ss.*

I, William Burns, clerk of the circuit court of the United States, in and for the ninth circuit and district aforesaid, do certify the foregoing to be a true copy from the record of the proceedings in the above named cause.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Jackson, the first day of [SEAL.] October, A. D. 1838, and in the 63d year of the Independence of the United States.

WM. BURNS, *Clk.*

1050.

SUPREME COURT OF THE UNITED STATES.

Nos. 96 and 97.

CHARLES P. WILLIAMS, Plff.

VERSUS

THE SUFFOLK INSURANCE COMPANY.

CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT, U. S. FOR THE DIST. OF MASSACHUSETTS.

INDEX.

	Original.	Print.
Names of Parties,	1	3
Statement of the Cases,	2	3
Opinion of Mr. Justice Story,	5	4
Points of Division of Opinion,	10	7
Clerk's Certificate.	13	7

Langtree and O'Sullivan Print.

1031.

UNITED STATES OF AMERICA:
Massachusetts District, ss.

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Monday, the fifteenth day of October, in the year of our Lord, one thousand eight hundred and thirty-eight.
Before the honorable,

JOSEPH STORY, *Associate Justice.*
JOHN DAVIS, *District Judge.*

Names of Parties.

Charles P. Williams, of Stonington, in the State of Connecticut, Merchant, a citizen of these United States, plaintiff, *versus* the Suffolk Insurance Company, a corporation established within the Commonwealth of Massachusetts, and by authority thereof, the members whereof are inhabitants of said Commonwealth, and citizens of the said United States, Dfts. In a plea of the case, &c.

SAME, *versus* SAME.

Statement of the cases.

These were actions of assumpsit on policies of Insurance, dated the 19th of August, 1830, whereby the plaintiff caused to be insured by the defendants for nine per cent. per annum premium, warranting twelve per cent. "lost or not lost," forty-nine hundred and nineteen dollars on fifteen sixteenths of Schooner Harriet, and eighteen hundred and seventy-five dollars on board said vessel, at and from Stonington Connecticut, commencing the risk on the 12th day of August, instant at noon, to the southern hemisphere, with liberty to stop for salt at the Cape de Verd Islands, and to go round Cape Horn, and to touch at all Islands, Ports and places for the purpose of taking seals, and for information and refreshments, with liberty to put his skins on board of any other vessel or vessels until she returns to her port of discharge in the United States; it being understood that the value of the interest hereby insured, as it relates to this insurance, is not to be diminished thereby. It is understood and agreed, that if the Harriet shall not proceed southeasterly of Cape Horn on a voyage towards the south Shetland Islands, and there be no loss, then the premium is to be six per centum, per annum, the assured warranting only nine per cent., vessel valued at five thousand dollars; outfits valued at two thousand dollars.

There was a similar policy underwritten by the defendants for the plaintiff on the same day, for the like voyage in all respects, of thirty-five hundred dollars, on the Schooner Breakwater, and two thousand dollars on outfits on board, at the same premium. The vessel being valued at thirty-five hundred dollars, and the outfits at two thousand dollars, upon which, also, an action was brought.

The declaration upon each policy averred a total loss, by the seizure and detention of one Lewis Vernet and other persons, pretending to act by the authority of the Government of Buenos Ayres, with force and arms.

The causes came on to be heard together, by the court, upon certain facts and statements agreed by the parties; the parties agreeing that the verdict should be rendered by the jury for the plaintiff and for the defendants, according to the opinion of the court upon the matters of law arising upon those facts and statements. And the cause was argued by C. G. Loring for the plaintiff, and by Theophilus Parsons for the defendants. It appeared from these facts and statements, that both of the vessels insured were bound on a sealing voyage, and proceeded to the Falkland Islands in pursuance thereof, and were there both seized by one Lewis Vernet, acting as Governor of those Islands, under the appointment and authority of the Government of Buenos Ayres. The Harriet was seized on the 30th of July, 1831, and was subsequently carried by the captors to Buenos Ayres, where certain proceedings were had against her in the tribunals, and under the sanction of the government of Buenos Ayres. She has never been restored to the defendants, but has been condemned for being engaged in the seal trade at the Falkland Islands.

The Breakwater was seized at the Islands on or about the 18th day of August, 1831, and was afterwards re-captured by the Mate and Crew, who remained on board, and was by them brought home to the United States, and after her arrival was libelled for salvage in the district court of Connecticut district, and salvage was awarded of one third part of the proceeds of vessel and property.

Copies of the orders and decrees of the courts of Buenos Ayres respecting the seal fisheries, of the appointment of Vernet as Governor of the Falkland Islands, of the proceedings against the Harriet, of the correspondence of the American Government with the Buenos Ayrean Government, relative to the jurisdiction of the Falkland Islands, were produced and read *de bene esse* in the case.

Opinion of Mr. Justice Story.

Mr. Justice Story, after the argument, stated his opinion as follows:

That the whole controversy turned upon a point which, if decided in favor of the plaintiff, would render the examination of all others unimportant. The Government of Buenos Ayres insists that the Falkland Islands constitute a part of the dominions within its sovereignty, and consequently that it has the sole jurisdiction to regu-

late and prohibit the seal fishery at those islands, and to punish any violation of its laws by a confiscation of the vessels and property engaged therein. On the other hand, the American Government insists that the Falkland Islands do not constitute any part of the dominions within the sovereignty of Buenos Ayres, and that the seal fishery at those islands is a trade free and lawful to the citizens of the United States, and beyond the competency of the Buenos Ayrean Government to regulate, prohibit or punish. The controversy is still undisposed of by the two Governments, each maintaining its own claims and pretensions, and neither admitting the claims and pretensions of the other. In this state of the diplomacy between the two countries, while the whole matter is in contestation between them, or, as we may say, *flagrante lite*, the question is, whether it is competent for this court to re-examine and decide, in its judicial capacity, upon the claims and pretensions of the two Governments, and thus to interpose its positive umpirage to settle the matters in dispute, at least to the extent required for the proper adjudication of the cases now before it.

My judgment is, that this court possesses no such authority, and that it is bound by the doctrines and claims insisted on by its own government, and that it must take them to be rightful, until the contrary is established by some formal and authorized action of that government. It is very clear that it belongs exclusively to the Executive department of our Government to recognize, from time to time, any new governments which may arise in the political revolutions of the world, and until such new governments are so recognized, they cannot be admitted by our courts of justice to have or exercise the common rights and prerogatives of sovereignty. This doctrine was fully recognized by the Supreme Court of the United States in Elston vs. Hoyt, (3 Wheat, R. 246, 324,) as indeed it had been before in the *city of Berne* vs. *the Bank of England* (10 ves. 353, s. 7, 11, ves. 583,) and *the Manilla*, Edw. Ad. 1. Now, before the revolution in South America, it seems to be historically true that the Falkland Islands were, if they were under the positive dominion of any power, a dependency of Spain, under the Vice-Royalty of La Plata. When Buenos Ayres separated herself from the government of Spain she might have claimed the sovereignty also of the Falkland Islands, as an appendage to her own dominions. But that claim, unless enforced by an actual possession, and a full recognition by other nations, could in no just sense, be deemed to give a fixed title. Buenos Ayres has undoubtedly been recognized by the Government of the United States as an independent government, but that recognition can by no means be extended to an admission of its title to the sovereignty of the Falkland Islands, unless some act of the Government can be shown which carries it to that extent. None such is shown; none such is pretended. On the contrary, our Government has expressly denied the sovereignty of Buenos Ayres over those islands, while it has admitted its territorial sovereignty on the continent of South America. And upon the principle already adverted to, a prin-

ciple well founded in the acknowledged doctrine of the law of nations, the Falkland Islands must be deemed to belong to their old sovereignty (whatever it might be) until the title of Beunos Ayres has been admitted by our Government. This short view of the matter seems to me to dispose of the main subject in controversy; for if Beunos Ayres had no legitimate sovereignty over those islands, the act of seizure of the Harriet and the Breakwater was a gross usurpation; and the decree of its tribunals upon the subject of the seizure of the Harriet was a mere nullity, utterly unfounded in point of jurisdiction.

But I wish to add a word or two more on this subject, upon a principle somewhat broader in its extent, and equally applicable to, and decisive of the merits of this case. It is, that this court, in its judicial character, cannot entertain political questions of this nature, or settle the rights and claims as to territory and sovereignty in controversy between us and foreign nations. On the contrary, this court is bound, so far as its own functions are concerned, to act upon the ground that the claims of our Government, and its assertions of its rights in this respect, are correct. *Omnia rita acta.* It might otherwise happen that the extraordinary spectacle might be presented of the courts of a country disavowing and annulling the acts of its own government in matters of State and political diplomacy. The true doctrine on this subject was laid down by the Supreme Court of the United States in *Foster* vs. *Neilson*, (2 Peters's R. 253, 307,) and it was fully acted upon at the last term of that court in the case of *Garcia* vs. *Lee*, (12 Peters's R. 511.)

Upon these grounds this court must hold both of these seizures unlawful; and, therefore, the plaintiff is entitled to recover as for a total loss in the case of the Harriet.

I have not thought it necessary to discuss at large the points suggested by the learned counsel for the defendants, that the loss was occasioned by the barratry or gross negligence of the master of the Harriet, in carrying on the seal fishery at the Falkland Islands, after the alleged warning given to him by Governor Vernet. Assuming that such a warning was given, I do not think that it could, in the present case, change the rights of the defendants.

If, upon every threat of illegal violence or seizure, the master were to be bound to abandon his voyage, there would be an end of all security to trade and commerce. It seems to me, therefore, that upon principle there is great reason to hold, that if the loss is occasioned by the illegal act of a foreign government, it is a loss within the perils of the policy, even though it might have been avoided by the master by a different course of conduct, if his actual conduct was *bona fide*, in furtherance of the objects of the voyage, and in pursuance of his duty to his owners.

Upon these considerations, my judgment is that the plaintiff is entitled to recover.

Judge Davis, (the district judge) was opposed to the opinion of Mr. Justice Story, on the following points and questions occurring in the case, viz:

Points of Division of Opinion.

1. Whether, inasmuch as the American Government has insisted and does still insist, through its regular executive authority, that the Falkland Islands do not constitute any part of the dominions within the sovereignty of the Government of Buenos Ayres, and that the seal fishery at those islands is a trade free and lawful to the citizens of the United States, and beyond the competency of the Buenos Ayrean Government to regulate, prohibit or punish, it is competent for this circuit court in this cause, to enquire into and ascertain by other evidence, the title of said Government of Buenos Ayres to the sovereignty of the said Falkland Islands, and if such evidence satisfies the court, to decide against the doctrines and claims set up and supported by the American Government on this subject; or whether the action of the American Government on this subject is binding and conclusive on this court, as to whom the sovereignty of those islands belongs.

2. Whether, if the seizure of the Harriet, by the authority of the Buenos Ayrean Government, for carrying on the seal fishery at the Falkland Islands was illegal and contrary to the law of nations, on account of the said islands not being within the territorial sovereignty of the said Buenos Ayrean Government, and the master of the Harriet had warning from the government of the said Islands under the Government of Buenos Ayres, that he should seize the said Harriet if she should engage in the seal fishery, and after such warning, the master of the Harriet engaged in such seal fishery, and the Harriet was illegally seized and condemned therefor, the loss by such seizure and condemnation was a loss for which the plaintiff is entitled to recover in this case, if the master of the Harriet acted, in engaging in such seal fishery bona fide, and with a sound and reasonable discretion, and under a belief that he was bound so to do, as a matter of duty to his owners and all others interested in the voyage, and in the vindication of the rights recognized and claimed by the American Government, or whether he was bound by law to abandon the voyage under such a threat and warning of such illegal seizure.

And the said judges of the said court being so opposed in opinion upon the points and questions aforesaid, at the request of the defendants, they are stated by the said judges, and under their direction as aforesaid, and are ordered to be certified under the seal of the said circuit court, to the Supreme Court of the United States, at their next session, to be by the said court finally decided.

I, Francis Bassett, clerk of the Courts of the United States, for the district of Massachusetts, hereby certify, that the foregoing is a true transcript of the record.

In testimony whereof, I have hereto set my hand, and affixed the seal of the said circuit court, this eighteenth day of January, in the year of our Lord one thousand eight hundred and thirty-nine, and in the sixty-third year of the Independence of the United States, of America.

[SEAL.]

FRANCIS BASSETT, *Clerk.*